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Paper No. 10

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DIRECTOR'S OFFICE
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DECISION
ON PETITION

In re Application of:

Lundell et al

Application No. 09/419,171

Filed: October 15, 1999

For: **METHOD OF CELL RE-SELECTION,
AND NETWORK PART, AND SUBSCRIBER
TERMINAL**

This is a decision on the petition filed May 19, 2003 to reset the period for reply under MPEP § 710.06.

An Advisory action was mailed to Applicant's attorney at the address of record on April 2, 2003.

Petitioner asserts that the Advisory action was received on May 5, 2003, after more than one month from the mailing of the Advisory action.

An Advisory Action does not set the time period for reply, so there is no period to reset.

Since the Applicant replied within two (2) months of the date of the final Office action, the shortened statutory period would therefore expire three (3) months from the date of the final (i.e. March 3, 2003) or on the date the advisory action is mailed (i.e. April 2, 2003), whichever is later. However, in no event can the statutory period for reply expire later than six (6) months from the date of the final rejection, i.e. later than June 3, 2003. See MPEP § 706.07(f).

According to 37 CFR § 1.181(f), the "mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings." Since the application is currently under final rejection, a proper response thereto must consist of either an amendment which places the case in condition for allowance, a Notice of Appeal (with appeal fee), or a Request for Continued Examination (RCE) in compliance with 37 CFR § 1.114 in order to avoid abandonment. See 37 CFR §§ 1.113 and 1.116. 37 CFR § 1.116(a) provides: "[t]he admission of, or refusal to admit, any amendment after final rejection, and any related proceedings, will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or save the application from abandonment under § 1.135."

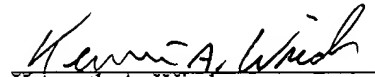
Since it has been determined that the request for reconsideration filed on February 3, 2003 and the amendment filed March 3, 2003 do not place the application in condition for allowance and there was no Notice of Appeal or RCE filed, the application became abandoned June 4, 2003 and remains abandoned in fact. It is unfortunate that applicant received the Advisory Action late. However, this circumstance does not relieve the application of its status as described above.

Accordingly, Petitioner's request to reset the time period is **DISMISSED** as moot.

Any request for reconsideration must be filed within **TWO MONTHS** from the mailing date of this decision.

Applicant should consider filing a petition under 37 C.F.R. 1.137(b) to revive an unintentionally abandoned application.

The application file is being forwarded to the Examiner for preparation of a Notice of Abandonment.


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